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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1671

In re: BEVERLY L. HENNAGER;
LOUIS A. JENNINGS,

Petitioners.

On Petition for Writ of Mandamus.
(1:15-cv-00149-LO-TCB)

Submitted: October 4, 2018 Decided: October 24, 2018

Before AGEE, KEENAN, and FLOYD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Beverly L. Hennager, Louis A. Jennings, Petitioners
Pro Se.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Beverly L. Hennager and Louis A. Jennings have filed a petition and an amended petition for a writ of mandamus asking us to order the district court to enforce its final order and distribute the remaining assets of their former [sic ongoing] family partnership. Petitioners have also filed motions to amend for disclosure, to assign a new random panel of judges, and to expedite the writ of mandamus. Petitioners' sibling, Katherine R. Dauphin, opposes mandamus relief, and has also filed a motion asking that sanctions be imposed against Petitioners. We conclude that Petitioners are not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003). Mandamus may not be used as a substitute for appeal, however. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. *In re First Fed. Sav. & Loan Ass'n*, 860 F.2d 135, 138 (4th Cir. 1988).

Petitioners have not established a clear right to the relief sought. Accordingly, we deny mandamus relief, deny as moot the motions to expedite, and deny Petitioners' motions to assign a new random panel of judges and to amend for disclosure. While we deny Dauphin's motion for sanctions at this time, we agree that Petitioners' repeated filings must be curtailed. We

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thus warn Petitioners that their continued vexatious filings in this court will result in the imposition of sanctions and, quite possibly, a prefiling injunction against them. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

KATHERINE R. DAUPHIN,)	
)	
<i>Plaintiff,</i>	)	Civil Action
v.	)	No. 1:15-cv-149
	)	Hon. Liam O'Grady
LOUIS A. JENNINGS AND	)	Hon. Theresa Buchanan
BEVERLY L. HENNAGER,)	
)	
<i>Defendants.</i>)	

ORDER

(Filed Jun. 16, 2017)

This matter comes before the Court on Defendant Louis Jennings' Second Motion for Disbursement of Funds. (Dkt. No. 405).

On August 10, 2015, the parties, general and limited partners in the Kay Jennings Family Limited Partnership, entered into a settlement agreement which authorized a special master, the Honorable Paul Sheridan, to maximize the value of the partnership assets. Judge Sheridan determined, and the Court affirmed, that selling the real property assets of the partnership would maximize the value of the assets to the partners. On June 12, 2017, the Special Master conveyed the DAMN property leasehold to a bona fide purchaser. The partnership's only remaining asset is the gross proceeds of the sale of the DAMN leasehold

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and other real property. The Court has also resolved all outstanding amounts owed by the partners to each other and to the partnership.

Because the partnership is no longer conducting any business, it is reasonable to wind up the partnership's affairs and dissolve the entity once its remaining cash assets are distributed to the partners. The Court has countenanced the distribution of this cash upon the resolution of outstanding legal challenges to the Court's prior orders.

Accordingly, Judge Sheridan shall advise the Court when he believes that all legal challenges by and against the partnership are exhausted. Upon review of that advice, the Court will order Judge Sheridan to dissolve the partnership and distribute the remaining assets.

Because this order provides for the distribution of the remaining assets of the partnership, Defendant Louis Jennings' Second Motion for Disbursement [sic] of Funds is **DENIED**. (Dkt. No. 405).

Further, this order is **FINAL** for purposes of appellate review for all issues decided by the Court up to the date of this order.

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Further, the Clerk of Court is instructed to strike this case from the active roll of cases. It is **SO ORDERED**.

/s/
Liam O'Grady
United States District Judge

June 16, 2017
Alexandria, Virginia

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

KATHERINE R. DAUPHIN,)	
)	
<i>Plaintiff,</i>)	
)	
v.	)	Case No. 1:15-cv-149
	)	(LO/TCB)
LOUIS A. JENNINGS,)	
ET AL.,)	
)	
<i>Defendants.</i>)	

ORDER

(Filed Jul. 6, 2018)

The Court has reviewed the proposed Consent Order filed by Defendant [sic non-party to the case] Michael Jennings (Dkt. 514, Attachment 1) and finds that it appropriately facilitates the distribution of assets pursuant to the Special Master's Report of May 11, 2018 (Dkt. 501) and this Court's Order of June 15, 2018, adopting the Report and Recommendation of Judge Buchanan. The Court adopts the proposed order as attached hereto (entitled the "Distribution Order") and will formally issue it upon receipt of the waivers addressed therein from any party wishing to file one.

Accordingly, for the reasons addressed in the proposed Distribution Order, the parties have 15 days from the date of this Order to file with the Court a copy of the proposed Distribution Order. The filed copy

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of the proposed Distribution Order must be initialed by the party on each page and signed by the party and notarized on the final page (page seven). Parties appearing in this case pro se may omit a signature on the line "Counsel for the undersigned." In consideration and deference to Defendant Louis A. Jennings's prior representations to the Court, both he and his wife must initial each page and affix their signatures before a notary for the Court to consider Louis A. Jennings's filed proposed Distribution Order an effective waiver.

As discussed in the proposed Distribution Order, no party is required by the Court to file a signed and notarized copy of the Distribution Order, and failure to file one will not affect any party's entitlement to the prompt distribution of the assets identified as "Net Distribution" under each party's name on page five of the proposed Distribution Order. The purpose of the waiver contained within the proposed Distribution Order is to ensure fairness—that any reserve held back to cover the costs of future litigation in this matter is drawn only from the funds of parties wishing to pursue such future litigation.

The Clerk of Court is instructed to mail a copy of this Order (with the attached proposed Distribution Order) to each pro se party.

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It is **SO ORDERED**.

/s/ Liam O'Grady
Liam O'Grady
United States District Judge

July 6, 2018
Alexandria, Virginia

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

KATHERINE R. DAUPHIN,)	
)	
<i>Plaintiff,</i>)	
)	
v.	)	Case No. 1:15-cv-149
	)	(LO/TCB)
LOUIS A. JENNINGS,)	
ET AL.,)	
)	
<i>Defendants.</i>)	

DISTRIBUTION ORDER

(Filed Jul. 6, 2018)

THIS DAY CAME the parties, by counsel, as to the final distribution of partnership funds, whereby Defendants seek the distribution of the remaining funds held by the Special Master for the Kay Jennings Family Limited Partnership ("KJFLP" or the "Partnership"), according to their respective interests, as detailed in the Report of the Special Master (Dkt. 501) (the "Report"), subject to the modifications set forth herein.

UPON CONSIDERATION of the foregoing and the record in this case, the Court finds as follows:

1. As reflected in the Report, the Special Master holds \$9,065,033.58 for the Partnership.
2. The Special Master has recommended that the following amounts be reserved and paid from Partnership Funds:

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Reed Smith LLP Invoiced Fees ("RS Fees")	\$ 42,526.95
Special Master Invoiced Fees ("SM Fees")	\$ 36,179.00
Reserve for SM Legal Fees ("Legal Escrow")	\$100,000.00
Reserve for Special Master Fees ("SM Escrow")	\$100,000.00
Reserve for Reed Smith Legal Fees ("RS Escrow")	\$ 50,000.00

3. Pursuant to the Report and Recommendation dated May 30, 2018 (Dkt. 507), as adopted by this Court's Order dated June 15, 2018 (Dkt. 513), Troutman Sanders LLP's charging liens against Beverly Hennager and Louis A. Jennings, Jr. shall be satisfied from the respective proceeds payable to them.

4. After payment of the RS Fees and SM Fees, and after deducting the Legal Escrow, the SM Escrow, and the RS Escrow, there remains \$8,736,327.63 for distribution to the partners of KJFLP ("Gross Distribution Amount").¹

5. By Amended Order dated June 8, 2018 (Dkt. 511), the Court determined that any of the partners who executed and submitted to the Court a consent

¹ The Report reflects that the amount available for distribution is \$8,603,327.63. This understates the amount available because it includes amounts for Troutman Sanders, LLP that exceed the actual liability therefor. In addition, the fees to Troutman Sanders are allocated in the Report to all of the partners, not the partners to whom such fees are allocated. The additional \$133,000.00 has been allocated below to the partners' pro-rata distributions.

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order containing the waivers and releases set forth herein would be entitled to his or her pro-rata portion of the Legal Escrow.

6. The Special Master previously has made the following distributions to the partners of KJFLP:

Katherine R. Dauphin	\$ 400,000.00
Louis A. Jennings, Jr.	\$ 873,142.49
Beverly Hennager	\$ 10,243.05
Michael F. Jennings	\$1,760,000.00

7. Notwithstanding Defendants' prior legal challenges, the Special Master is entitled to quasi-judicial immunity under Federal and Virginia law because his administration of the settlement agreement was a judicial act undertaken pursuant to Court authorization. *Mathis v. Goldberg*, 538 F. App'x 310, 311 (4th Cir. 2013) (unpublished); *Harlow v. Clatterbuck*, 230 Va. 490, 493 (1986).

8. The same immunity that applies to the Special Master also extends to the professional advisers used by the Special Master including, but not limited to, CBRE, its agents, and employees, and JMSP, Inc., its agents, and employees, because these advisers provided reports and recommendations in support of the Special Master and the Court's administration of the settlement agreement. *Harden v. Green*, 27 Fed. Appx. 173, 77 [sic] (4th Cir. 2001) (unpublished).

9. To facilitate the final distribution of funds, the undersigned has, by the signature below and by the signature of undersigned's counsel, consented to

certain restrictions with respect to subsequent litigation and claims, said restrictions being as set forth herein.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Order addresses the distribution of partnership funds only to the extent that it seeks the distribution of funds to the undersigned. To the extent that a distribution of partnership funds relates to the distribution of funds to partners other than the undersigned, such a request would be addressed by separate Order(s) of this Court.

2. The undersigned shall not seek to rescind the sale or otherwise challenge, as a demand for relief or as a collateral consequence of any other legal challenge, the purchaser's title to any of the Three KJFLP Partnership Properties sold by the Special Master in December 2016.

3. The undersigned shall immediately dismiss any pending appeal or petition for any writ relating in any manner to these proceedings, and irrevocably waives any right to file any appeal in these proceedings.

4. The undersigned shall not sue or initiate any lawsuit against any person or entity involved in any manner in connection with these proceedings, including without limitation the parties; the Partnership; any of the Partnership's general or limited partners in their individual capacities or otherwise; any of the

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partners' or the Partnership's former or current attorneys; real estate appraisers; banking institutions; real estate brokers; accountants; consultants; purchasers; Judges; the Court; the Special Master; or anyone acting by or for any of the foregoing, including their respective employees and agents.

5. In the event that the undersigned elects to initiate any lawsuit (whether at law or in equity or otherwise) contrary to the foregoing, undersigned shall not do so *pro se* and may only do so by and through an attorney-at-law licensed to practice law in the Commonwealth of Virginia.

6. The Special Master shall, upon entry of this Order, disburse the following amounts:

Reed Smith LLP (for RS Fees)	\$ 42,526.95
The McCammon Group (for SM Fees)	\$ 36,179.00
Reed Smith LLP (for Legal Escrow)	\$100,000.00
Reed Smith LLP (for SM Escrow)	\$100,000.00
Reed Smith LLP (for RS Escrow)	\$ 50,000.00

Reed Smith LLP shall deposit the Legal Escrow, SM Escrow, and RS Escrow in its attorney trust account, to be further disbursed as set forth below.

7. The Special Master shall, upon entry of this Order and the satisfaction of the conditions set forth herein, disburse to the undersigned the amount set forth as to the undersigned in the table below, which is based upon Schedule C of the Report, adjusted to reflect the corrected Gross Distribution Amount. Counsel for the undersigned shall make arrangements with the Special Master to receive the disbursed funds, and to

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instruct the Special Master as to the person or entity(ies) to whom such disbursements should be directed:

Katherine R. Dauphin

Leasehold Sale Equalizing Distribution	\$ 480,000.00
General Equalizing Distribution	473,142.19
Pro Rata Distribution	<u>1,002,800.14</u>
Net Distribution	\$1,955,942.33

If Katherine R. Dauphin is the undersigned, Reed Smith LLP shall pay Katherine R. Dauphin, from the Legal Escrow, an additional sum of \$20,000.00.

Louis A. Jennings, Jr.

Leasehold Sale Equalizing Distribution	\$ 480,000.00
General Equalizing Distribution	0.00
Pro Rata Distribution	1,002,800.14
Less Troutman Sanders Lien	<u>(40,672.54)</u>
Net Distribution	\$1,442,127.60

If Louis A. Jennings, Jr. is the undersigned, Reed Smith LLP shall pay Louis A. Jennings, Jr., from the Legal Escrow, an additional sum of \$20,000.00.

Beverly Hennager

Leasehold Sale Equalizing Distribution	\$ 480,000.00
General Equalizing Distribution	862,899.44
Pro Rata Distribution	1,002,800.14
Less Troutman Sanders Lien	<u>(76,409.51)</u>
Net Distribution	\$2,269,290.07

If Beverly Hennager is the undersigned, Reed Smith LLP shall pay Beverly Hennager, from the Legal Escrow, an additional sum of \$20,000.00.

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Michael F. Jennings

Leasehold Sale Equalizing Distribution	\$	0.00
General Equalizing Distribution		946,284.98
Pro Rata Distribution		<u>2,005,600.28</u>
Net Distribution		\$2,951,885.26

If Michael F. Jennings [sic] the undersigned, Reed Smith LLP shall pay Michael F. Jennings, from the Legal Escrow, an additional sum of \$40,000.00.

8. The Special Master shall disburse the sum of \$117,082.05 to Troutman Sanders, LLP, in payment of the liens adjudicated in its favor and against Louis A. Jennings, Jr. and Beverly Hennager.

9. Reed Smith LLP shall hold in its trust account any portions of the Legal Escrow not paid to a partner pursuant to ¶ 7, above, for a period of three years after the date of this Order, to secure payment, upon the direction of the Court, of legal fees and costs that may be incurred by any of the persons and entities referenced in ¶ 4, above. Upon the expiration of such three-year period upon request of a partner, or upon Order of the Court, Reed Smith LLP may disburse the remaining funds, if any, in the Legal Escrow to any partner not previously receiving such funds in accordance with ¶ 6, above.

10. Reed Smith LLP shall hold in its trust account the RS Escrow and SM Escrow to pay any fees charged by Reed Smith LLP or the Special Master in connection with winding up their duties hereunder. Reed Smith LLP may pay such fees from the RS Escrow and SM Escrow without further Court approval.

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Upon the expiration of three years after the date of this Order, any funds remaining in the RS Escrow and SM Escrow shall, upon request of a partner, or upon Order of the Court, be disbursed to the partners according to their respective pro-rata shares.

It is **SO ORDERED**.

Liam O'Grady
United States District Judge

July __, 2018
Alexandria, Virginia

WE ASK FOR THE ENTRY OF THIS ORDER AND EXPRESSLY CONSENT TO THE FOREGOING RESTRICTIONS:

Counsel for the undersigned Date

Undersigned Date

Notary Public Date

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

KATHERINE R. DAUPHIN,)	
)	
<i>Plaintiff,</i>)	
)	
v.	)	Case No. 1:15-cv-149
	)	(LO/TCB)
LOUIS A. JENNINGS,)	
ET AL.,)	
)	
<i>Defendants.</i>)	

ORDER

(Filed Jul. 26, 2018)

The Court has reconsidered its Order of July 6, 2018 (Dkt. 516) and finds a modification necessary. Michael Jennings and Katherine Dauphin have both filed waivers responsive to that Order, leaving \$40,000 in the Special Master Legal Fees ("Legal Escrow") account to cover costs of any appeals by Beverly L. Hennager and/or Louis A. Jennings. The Court finds that \$20,000 per partner is insufficient to address those potential costs and \$100,000 per partner is instead necessary. In fairness, this increased withholding from the net distribution entitles Beverly L. Hennager and Louis A. Jennings to an opportunity to reconsider filing waivers pursuant to the July 6, 2018 Order.

Accordingly, Beverly L. Hennager and Louis A. Jennings have seven days from the date of this Order to file a waiver pursuant to the instructions in the

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Court's July 6, 2018 Order (Dkt. 516). Failure to file a timely waiver will result in the withholding of \$100,000 per partner for the Special Master Legal Fees ("Legal Escrow") account, and result in adjusted net distributions of \$2,189,290.07 to Beverly L. Hennager and \$1,362,127.60 to Louis A. Jennings. The waivers filed by Michael Jennings and Katherine Dauphin, appearing at Docket Entries 517 and 523 respectively, remain effective and no further action is necessary by those parties.

The Clerk of Court is instructed to mail a copy of this Order [sic] all parties and the Special Master.

It is **SO ORDERED**.

/s/ Liam O'Grady
Liam O'Grady
United States District Judge

July 26, 2018
Alexandria, Virginia
